LEONG YEW CHIN
t/a West Malaysia Frozen Food Co.

v.

HOCK HUA BANK BERHAD

HIGH COURT MALAYA, KUALA LUMPUR
DATO' V.C. GEORGE J.
[CIVIL SUIT NO.C 1073 OF 1980]
26 MAY 1994

BANKING: *Bills of exchange - Export of frozen prawns to consignee in England - Advances sought and obtained by consignor from its banker in anctipation of collection - Whether bank had unconditionally purchased the bill or whether the advances were refundable if drawee did not honour the bill.*

BANKING: *Overdraft account - Whether customer had accepted debits without protest - Conduct - Whether customer precluded from claiming debits were wrongful.*

The plaintiff exported frozen prawns from Malaysia to the United Kingdom. One of his customers was I. Mathew of Heywood, Lancashire. The method of payment was by bills of exchange drawn by the plaintiff against the consignee requiring the consignee as drawee to pay the defendants (the plaintiff's banker) the amount on the bill equivalent to the invoiced valve of the consignment.

The defendants handed to its correspondent bank in England, the collection schedule for collection of the bill from the consignee/drawee. The documents of title to the consigned goods are handed to the consignee/drawee only after the terms of the bill are met.

In anticipation of the collection, the plaintiff sought and obtained advances from the defendant at 100% of the bill's value. In the letter of instructions the plaintiff undertook and agreed that the collecting bank would not be the responsible for the acts and ommission of its correspondent bank and that advances and disbursements incurred would be reimbursed by the plaintiff. The consignee/drawee defaulted in payment of the bills of exchange. The defendant notified the plaintiff and debited the plaintiff's account with the advances, disbursements and interest accrued. The plaintiff claimed that the amount "advance" could not be reimbursed as the defendant had unconditionally purchased the bills and filed suit for moneys had and received.

Held:

[1]On the evidence, there was no purchase of the bills or any of them. The amounts credited were advances to the plaintiff and his conduct also shows his acceptance of the position. It is highly unprobable that any bank would "purchase" a bill at 100% value.

[2]The plaintiff had accepted that the defendants were entitled to debit his account for the advance, charges and interest. He had accepted that the account was in overdraft and that the balance was correct in the statements.

[Plaintiff's claim dismissed with costs. Consequential orders made]

Cases referred to:
Roxburgh v. Cox, [1881] 17 Ch. 520 ***(refd)***
Misa v. Currie, [1876] 1 App Cas 544 ***(refd)***
In re Keever [1967]1 Ch 182 ***(refd)***
Prideaux v. Criddle [1869] LR 4 QB 455 ***(refd)***

Legislation referred to:
Bills of Exchange Act, s.17

Other sources referred to:
Paget's Law of Banking, 8th Ed., p. 498 to 506

For the plaintiffs-Raja Aziz Addruse (Chew Biman with him); M/s. Chew Biman & Co.
For the defendants-Peter Yeoh (Andrew K.C. Ng with him); M/s. Yeo & Yeo

JUDGMENT

V.C. George J:

At all relevant times the plaintiff carried on the business of exporting frozen prawns from Malaysia to the United Kingdom. One of his regular customers was one I. Mathew of Heywood, Lanchashire, England. The instant case involves a number of invoices raised by the plaintiff in respect of a number of consignments of frozen prawns shipped to England for I. Mathew as consignee. The method adopted by the plaintiff in respect of payment by the consignee for these consignments of prawns was by bills of exchange drawn by him against I. Mathew requiring him as drawee to pay to the order of the defendants as the plaintiff's bankers, the amount on the bill which was equivalent to the invoiced value of the relevant consignment. The terms of the payment of the bill were stated in the bill. Each bill had on it the identifying number of the relevant invoice in respect of which it was drawn.

In this mode of payment what happens is that having executed the bill of exchange the plaintiff hands it over to his bankers, the defendants, for them to arrange for collection to be effected. Together with the bill he hands over to the bank a number of documents including a letter of instructions (which is a printed form provided by the bank in which are blank spaces to be filled with, *inter alia*, the terms on which the collection is to be effected), the relevant invoice and the bills of lading and other shipping documents e.g. the packing lists (by this stage the prawns would have been on its way to the importing country). The defendant as the collecting bank, sends to its correspondent bank in the country to which the prawns are to be exported, a set of the documents which includes the bill of exchange (the whole set is called the collection schedule) and instructs it to attend to the collection of the amount of the bill. In the instant case the correspondent bank used was the London branch of the State Bank of India. On receipt of the collection schedule the correspondent bank is required to inform the drawee of that fact and to give him the details of the bill and of the shipment to enable the drawee to deal with the bill according to its terms which could be payment on sight or documents against acceptance, documents against trust deed and letter of undertaking and so on. On the drawee meeting the terms, the documents are released to him. On presentation of these at the relevant warehouse, the cartons of prawns the subject matter of the documents are released.

In the instant case the relevant invoice numbers are BKS/11/74, and IM/1/74 to IM/15/74. In respect of each of these transactions the plaintiff had presented a bill of exchange to the defendant bank requiring it to act as the collecting bank.

Now, according to the defendants, the plaintiff had in each case sought and obtained advances from the defendant in anticipation of the collection. In each of the letters of instructions by the plaintiff to the defendants there was a box for particulars to be completed in respect of "Application for advance on consignment". There was a blank space to be filled showing the amount to be advanced to the drawer as a percentage of the amount to be collected. In each of the letters of instructions relevant to this action, this blank had not been filled. However it is common ground that in fact the defendants had credited the

plaintiff's current account with an amount equivalent to 100% of the value of the bill. The second (and last) sentence in the said box in the letter of instruction reads "In case of non-acceptance or non-payment of the draft, we shall refund you the advanced amount together with interest at...% p.a. immediately upon receipt of your advice". In each case the blank for the rate of interest payable was not filled.

In the letter of instructions there is also a statement to the effect that the plaintiff undertakes and agrees that the collecting bank will not be responsible for acts and omissions of its correspondent bank. This is followed by the drawer of the bill repeating as it were, that advances and disbursements made in anticipation of and incurred for collection respectively will be reimbursed.

One area of dispute in this case is in respect of this 100% payment that had been made in respect of each bill. The defendants say that it was an advance that was refundable in the event the drawee did not honour the bill. For the plaintiff the contention appears to be that the defendant bank had unconditionally purchased the bill and the amount credited in respect of each bill being the purchase price of the bill there can be no question of reimbursement.

No payment was made to the correspondent bank or to the defendants by the drawee in respect of each of the said bills of exchange on due dates or at all. The defendants say that after the plaintiff had been notified of the non-payment, his account was debited with the amount that should have been paid by the drawee. Also debited were the equivalent of the disbursements incurred by the defendants and/or their correspondent bank in respect of the transaction and interest accrued for the use of the money from date it was credited to the account until the date the debit was effected. The defendants contend that they were entitled to effect the debits pursuant to the understanding between the parties that in the event that any of the bills were dishonoured the defendants were entitled to reimbursement.

The credits were made on different dates, between 30 May 1974 and 24 October 1974, as and when collection schedules were submitted. The debits were effected after the bills were deemed to have been dishonoured, on various dates between 20 August 1974 and 31 October 1975. Although the bills were in amounts in pounds sterling, the plaintiff's account was credited with the equivalent amount in ringgit. In each instance a credit note was issued and sent to the plaintiff which stated that the bank had credited the plaintiff's account with the amount "being purchase of your bill of exchange..."

When the debits (also in ringgit) were effected a debit note was issued and sent to the plaintiff advising him that the bank had debited his account for the amount "being amount advanced against your bill.....".

The plaintiff by the statement of claim contends that as the bills of exchange had been unconditionally purchased by the defendants the debiting was wrongful and illegal and amounted to conversion which has resulted in the plaintiff suffering damages. However at the trial, Counsel for the plaintiff restricted the claim to the plaintiff's alternative contention that the amounts debited are payable to the plaintiff by the defendant as moneys had and received. Judgment for the amounts debited, damages, interest and costs are prayed for.

Now, two of the invoices, BSK/11/74 and IM/1/74, and the bills and plaintiff's letter of instructions to the defendants relevant to them, were each marked "At sight D/P". It is common ground that that meant that payment of the bills was to be made forthwith on sight of the bill by the drawee and that upon such payment the papers were to be released to the drawee to enable him to take delivery of the prawns. In respect of these two transactions

the plaintiff had later given further instructions to the defendants for the drawee to take delivery of the prawns against trust receipts and related letters of undertaking instead of against payment.

As to the bills in respect of the 14 invoices IM/2/74 to IM/12/74 the defendants say that there were inconsistencies that could amount to contradictions in the various documents in respect of each of the transactions in respect of the terms of delivery.

An examination of the documents show that the invoices provide for "D/P at sight" which also apparently means for delivery to be on payment which should be effected at sight of the bill. In respect of the delivery in the plaintiff's letter of instructions, the words used are "Deliver documents against payment". This obviously means that the documents are to be released only on payment but when the payment has to be effected is not spelt out. As for the bills themselves, when the payment is to be effected is stated: one of them (IM/12/74) provides for payment to be at 60 days after sight and the others at 30 days after sight. However the bills are silent as to when the documents are to be released.

Encik Ko Wai Khion who used to be at all relevant times the Assistant Manager of the Jalan Klyne (as it was then known) Branch of the defendant bank at which branch the plaintiff had his account in which the debits the subject of this action had been made, had testified on behalf of the defendant. In the course of his testimony Encik Ko said that he had been of the view that the terms in the invoices and in the letter of instructions were inconsistent with the terms in the bills IM/2/74 to IM/12/74 and that these inconsistencies called for a clarification. According to him, in the face of these inconsistencies in the terms, as the officer of the bank dealing with the plaintiff, he had sought clarification from the plaintiff in respect of the terms and the plaintiff had in each case, orally either on the telephone or at Ko's office instructed him that the terms on which the defendant's correspondent bank should act on the bills in respect of IM/2 to IM/12 of 1974, was 30 days or 60 days, as set out in the relevant bill and should be "documents against acceptance" which apparently means that the documents may be released to the drawee upon his accepting the bill and he would have 30 or 60 days as the case may be to pay the amount on the bill. Encik Ko went on to testify that it was because of these fresh instructions that the plaintiff had given, that the bank had sent instructions to their correspondent bank, by what are known as "tracers" requiring them to deliver the documents against acceptance and payment was to be expected according to the tenor of the bill i.e within 30 or 60 days.

Now "acceptance" is a term of art in banking. It is defined by s.17 of the Bills of Exchange Act which provides that the acceptance of a bill is the signification by the drawee of his assent to the order of the drawer - in other words that he agrees to meet the terms of the bill - and is effected by the acceptance being written on the bill and being signed by the drawee. The section goes to on provide that the mere signature of the drawee on the bill without additional words is sufficient to signify acceptance.

The plaintiff denies that there was any inconsistency between the terms of the invoices and the letters of instructions and the terms set out in the bills. He went on in his testimony to deny that Encik Ko had sought a clarification in respect of the alleged inconsistencies or that he had given fresh oral instructions as alleged or at all.

Counsel for the plaintiff had submitted that it was improbable that his client would have gone on repeating the alleged inconsistency if in fact Encik Ko had brought the matter to the plaintiff's attention when the defendant attended to the collection in respect of the earliest or some of the earlier of these bills. There is certainly force in that submission. On the

other hand in favour of the bank, it could be asked, with equal force,why it should have sent out tracers in respect of all those 11 bills requiring the collecting bank to deliver documents against acceptance when it had no instructions to do so. The officials of the bank may have negligently done so once or twice or even 3 times but it does seem improbable that they could have done so in respect of all 11 bills. It is perhaps relevant here to recollect that it is common ground that in respect of the bills for BSK/11/74 and IM/1/74 the plaintiff was prepared to release the prawns without payment being effected. He had instructed the bank to have the documents released to the drawee without payment being effected - although the initial terms were "At sight D/P".

It seems to me, however, that nothing significant (other than credibility of the protagonists) really turns on this issue as the plaintiff is not suing the bank for negligence in the discharge of its duties as the collecting bank.

The defendants contend that the plaintiff's contemporaneous conduct was consistent with his having accepted that the amounts credited to his account were repayable advances and that the bank in any event was entitled (as the bank says it was) to make the debits that had been made. *Inter alia*, it was contended that he had not protested any of the debits. He had continued to bank with the defendants. Even when the bank insisted that he should provide security for the overdraft, which, with the alleged improper debits had been substantial, he had without demur provided a 3rd party charge of lands owned by his wife. The plaintiff's firm had contemporaneously even confirmed that the balance owing to the bank on his overdraft account No. 529, as at 31st December 1976, was RM 321, 809.21 which amount included all the items of debit, the subject of this action.

I pause here to note that the plaintiff says that he had made oral protests in respect of the debits and had sent a letter to the defendant dated 9 January 1975 a copy of which was produced as exhibit P1 protesting in respect of a number of the debits that had been made. The defendants deny that there were any protests and contend that there was no such letter of 9 January 1975. Encik Ko testified that they had never received it. No proof of delivery or even of posting of this letter was provided to the Court perhaps because the defendants stand on this point, that it was denied that there had been such a letter, does not appear to have been put to the plaintiff.

The defendants say that not only did the plaintiff by this conduct appear to accept that the defendants were entitled to debit the account but he had also accepted that it was for him and not the bank to try and get some recourse from I. Mathew. It is indeed on record that he had instructed the bank to instruct their agents to take legal proceedings against I. Mathew. It seems to me that it cannot be effectively denied that the proceedings had to be on the plaintiff's behalf as neither the defendants nor the State Bank had any cause of action against I.Mathew. In the meantime, according to En. Ko, the plaintiff told him that he was negotiating with I. Mathew and that he had sent his brother to London to sort out the matter and that he himself was going to London for that purpose. He testified that the defendants's understanding of what had happened was that the plaintiff or his brother, on his behalf, had come to an understanding with I. Mathew and had taken, over the prawns from him and had made his own arrangement to have the prawns disposed of. It was suggested by the defendants that some of the prawns were released to the plaintiff's brother and another lot of the prawns to another customer of theirs in London known as Chan Brothers who had sold the prawns and remited the proceeds of sale to the account of the plaintiff with the defendant.

Now, the plaintiff's initial testimony was that he did not know what had happened to the prawns. He accepted that the number of cartons involved *vis-a-vis* the invoices and bills of

exchange the subject of this action were 12712. When it was suggested that he knew that the prawns had been released to I. Mathew he not only denied all knowledge of that but volunteered the information that the prawns could be with the defendant's correspondent bank in London. When it was put to him for a third time that he knew what had happened to all the 12172 cartons he again said, "I don't know what happened to them". He was then referred to IDB 149 which he accepted was a copy of his letter dated 6 February 1975 to the State Bank of India in London. He also accepted that IDB 88 was his letter dated 17 September 1974 to I.Mathew. He agreed with Counsel that those letters show that he was well aware that the 12712 cartons of prawns were in the possession of I. Mathew.

At this juncture in the testimony of the plaintiff I gave him an opportunity of explaining the patent inconsistency between his earlier answers and what his two letters disclosed. He failed to give an acceptable explanation then or in re-examination.

Counsel for the defendant relentlessly pursued the point and referred him to his own statement of defence and counterclaim in a suit that had been taken out by I. Mathew against him, the subject matter of which was the same shipment of prawns. In paragraph 7 of his statement of defence in the I. Mathew suit he avers that some of the prawns were released to I. Mathew against trust receipts and that the balance of 10746 cartons of the prawns were released by I. Mathew to him to enable him to sell it at the best possible price. It was further averred in the statement of defence that the amount realised by the sale was £141,272.78 and that that amount had been remited to the defendants in the instant case.

This seemed straight-forward - £141,272.78 was indeed remited to the defendants for the plaintiff's account which had been credited with that amount. I pause to note that if that averment was accepted as being what had happened, that would perhaps put paid to the plaintiff's claim because he cannot be seen to have the cake and eat it.

However the plaintiff denies that which was averred and contends that he did not know how his solicitors came to draft those averments in the statement of defence. The plaintiff's contention is that the £141,272.78 was the proceeds of the sale by Chan Brothers of some other prawns exported to them by the plaintiff and not the prawns sent to I. Mathew. As to the letter IDB-149 which clearly shows the plaintiff informing the State Bank of India that the arrangement arrived at with I. Mathew included the release of the balance of the cartons of prawns to the plaintiff so that he could himself arrange for them to be sold, the plaintff's testimony was that that arrangement had not in fact been implemented. Counsel also referred him to his letter of 17 September 1974 (IDB88) to I. Mathew consistent with the contents of IDB-149 and followed that up by referring to his application dated 24 December 1975 to Bank Negara, II DB 155C-5, " for change of facts" which phrase was explained to the Court.

In exporting the prawns to England the plaintiff had to and obtained the permission of the Controller of Foreign Exchange at Bank Negara to do so and had caused what are known as KPW 3 forms to issue in which *inter alia* the amount of the relevant invoice was given. The application for "change of facts" was his application to Bank Negara to accept that in respect of some 20 invoices (which included all the I. Mathew's invoices the subject of this action) although the aggregate value as set out in the relevant KPW-3 forms amounted to £264,909.14 the actual amount recovered from the sale of the prawns was only £141,210.53. The reason given by the plaintiff in support of the application was that the buyer had "dishonoured our contract. We sold out stock to another buyer at reduced price."

The plaintiff's attempt to get round this very damaging evidence was to testify in effect that what was stated in the application to Bank Negara for the change of facts was not true. He

testified that he had submitted it because the defendant had pressurised him to do so because Bank Negara "was chasing" the defendants about the plaintiff's applications in respect of the foreign exchange. This turned out to be quite an implausible explanation because, as was pointed out in the course of the trial by Puan Hasnah of Bank Negara, the applicant in the various KPW-3 forms submitted was the plaintiff and not the defendant bank and that it was to the applicant exporter that the Controller of Foreign Exchange would look for explanations for not bringing in the foreign exchange permission for which had earlier been sought and obtained. Incredibly the plaintiff also said that the idea that he submit a false application came from not only Ms. S.L. Teh of the defendant bank but from Puan Hasnah herself. In the cross-examination of Puan Hasnah it is significant that it was not suggested to her that she had with Ms. Teh advised the plaintiff to submit the KPW-3 form setting out in it that which was not true.

According to the plaintiff in his testimony the £141,210.53 were the proceeds of the sale of prawns the subject of "other transactions". However he also said that the invoice number of the transactions were written by him on his copy of the document supporting the KPW-3 application. It is seen on that document that three I. Mathew invoice i.e IM/13/74, IM/14/74 and IM/15/74 are included with four other invoices raised by the plaintiff against Chan Brothers with whom he had been dealing for years. These invoices having been raised by the plaintiff, they must be in respect of prawns exported from Malaysia to Chan Brothers. The plaintiff went on to testify that the invoiced value of the seven transactions was £97,033.16 but that the prawns the subject of these invoices were sold for £141,210.53 which was inconsistent with other testimony that overwhelmingly suggested that the whole problem with the export of prawns in 1974 to U.K. was that because of the recession the importers in U.K. could not realise in the U.K. even the invoiced value of the prawns. *Inter alia* this could be clearly seen when the plaintiff, when referred to his letter of 26 December 1974 to the defendant in respect of two invoices to Chan Brothers requesting the defendant to collect from them in London £17,560.96 conceded that the aggregate value of those two invoices was some £28,000. He explained that because of the recession Chan Brothers had requested the plaintiff to let them have the prawns for £17,560.96 and "they would sell at better times and better prices." The plaintiff went on to say that the £17,560.96 was part payment for the consignment. However inconsistent with that, the said letter to the defendant Bank instructs the Bank to collect the amount "in full settlement."

It is on record that both the plaintiff and/or his brother were in touch with I. Mathew and with the defendant bank's correspondent Bank in U.K. in respect of the consignment of prawns. The correspondent Bank in effect summarizes the position that obtained following the Leong letter of 17 September 1974 to I. Mathew (IDB88) in its cable of 22 November 1974 to the defendant which is exhibit D5 which is as follows:

> Yours 19th concerning your various bills unpaid on I Mathew by the West Malaysia Frozen Food Company please note Mr. Mathew has transferred all repeat all but 1,200 cartons canned shrimps to Mr. Y.K. Leong by private arrangement stop these 1,200 cartons Mr
>
> COL LT 19th 1,200 1,200
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>
> Mathew has agreed to purchase stop payment not yet received and Mr. Leong therefore requires return of the 1,200 cartons to him stop Mr. Mathew will return the cartons on the understanding that shippers can give him undertaking to pay all his expenses so far incurred namely insurance transport storage

COL 1,200

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Etc stop Mr. Leong is agreeable to this proposition please confirm whether we may accept the proposal for settlement stop the matter has also been referred to our solicitors who state in view of the special circumstances it would be advisable if settlement can be obtained outside outside legal proceedings stop

LDE927 XLD1203 LT HOC PAGE 4/10

Pending your confirmation we are taking no further action Hoondee."

The plaintiff's letter ID149 of 6 February 1975 read with this cable confirms that what is dealt with at that stage is the balance of the consignment i.e. what was left with I. Mathew after he had "transferred all repeat all but 1200 cartons canned shrimps to Mr. Y.K. Leong by private arrangement....." At that stage there was no more dispute in respect of the difference between the aggregate of the cartons shipped to I. Mathew computed in exhibit D4 by simple addition,i.e. the 12,712 cartons, and the sum of the 1200 cartons to be transferred by I.Mathew (as confirmed in D5 and in the plaintiff's letter IDB149) and the 766 cartons sold by I. Mathew a fact acknowledged by the plaintiff in his letter IDB149. This amounts to 10,746 cartons [12,712 - (1200 + 766) = 10,746]. By 6th February 1975, the date of the plaintiffs' letter IDB149, all the cartons of prawns were accounted for save 36 cartons.

I pause to note that it is significant that this exercise in arithmatic was initially done by or on behalf of the plaintiff in his statement of sefence in the I. Mathew action against him. Paragraphs 8 and 9 of the statement of defence is as follows:

8. When the plaintiff was unable to honour the trust receipts given by him to the defendant's Bankers or its agent in London, the plaintiff agreed to release to the defendant who was acting on the instructions of his said bankers, the balance of 10746 cartons of frozen prawns that were then in the plaintiff's possession to sell them at the best price available in London as part payment of the due from the plaintiff to the defendant's bankers and to mitigate the plaintiff's losses.

9. The defendant has managed to sell the 10746 cartons of goods at £141,272-78 which sum has been paid to the defendant's bankers leaving a balance sum of £77,485-94 due and payable by the plaintiff to the defendant's bankers.

The value of all the 16 invoices is £2128,758.72. In his counterclaim in the I. Mathew action the plaintiff sued for £77,485.94. It cannot be a coincidence that £218,758.72 less the £141,272.78 remited by Chan Brothers amounts to £77,485.94.

Inter alia, in the face of the contemporaneous documents and the pleadings drafted and filed some time later on behalf of the plaintiff in I.Mathew's action against him, I cannot but find as a fact almost beyond any reasonable doubt that the plaintiff and/or his brother as his agent had taken over initially 10746 cartons of the prawns from I. Mathew and later another 1164 cartons pursuant to a settlement arrived at with I. Mathew. The 10746 cartons of prawns were sold at a loss to Chan Brothers for £141,210.50 who had in due course, at the instance of the plaintiff, remited that amount to Kuala Lumpur and which amount was credited to the plaintiff's account with the defendant.

The plaintiff's attempts to explain the remittence of £141,210.50 was inconsistent with the contemporary documents and implausible to boot. A glaring example of this is the fact that the £141,210.50 by Chan Brothers appeared to have originated in London and that it was unlikely that they were in respect of prawn shipped from Malaysia for Chan Brothers as was suggested by the plaintiff. This brings me to the issue of whether in fact the defendants

had purchased the bills of exchange. In my judgment, apart from the use of the word "purchase" in the credit notes issued by the defendant in crediting the plaintiff's account with the full value of the bills of exchange and the non-filling of some of the blank spaces in the letters of instructions, the rest of the evidence show beyond any reasonable doubt that in fact there was no purchase of the bills or any of them. The amounts credited were clearly by way of advances which the plaintiff's conduct shows was what he himself at all relevant times had accepted to be the position. Even if all the other evidence is ignored the contention of the plaintiff in Court that the bills were purchased can in fact be demolished by pointing out that which is highly improbable, that any bank would "purchase" a bill at its 100% value. There could have been something albeit slim to hang on to by the plaintiff if the amount credited to the account was a lesser amount than the full value of the bill. It could have been urged then that the bank was buying the bill at a discounted price. Of course that would also have been tested against the rest of the evidence. The conduct of the parties and in particular that of the plaintiff, militates against giving any credence to the contention that the Bank had unconditionally, or at all, purchased the bills.

In my judgment, as long ago as February 1975 the plaintiff had accepted that there had been a settlement between him and I. Mathew in respect of the shipment of the prawns to I. Mathew, save in respect of 36 cartons. It is equally clear that the plaintiff had accepted that I. Mathew was not going to make any payment and that as he had privately settled the matter with I. Mathew (to mitigate the loss incurred by I. Mathew not honouring the bills), he also accepted that it was his liability to pay off the Bank and because of that, the defendants were entitled to recourse from him for the advances they had made in anticipation of I. Mathew honouring the bills. He had accepted, and in my judgment on the evidence before the Court, without protest, that the defendants were entitled to debit his account with the equivalent of the amounts that the State Bank had not been able to collect in respect of the bills and bank charges and interest. He had accepted that the account was in overdraft an and that the balance owing shown in the banks statement was correct.

It was submitted that in any event the Bank should not have resolved to debiting the plaintiff's account as they did. I fail to see merit in this submission. The amount advanced was by crediting the account. I fail to see that in respect of payments due from their customer they should not debit the account. Anyone who has a current account will know that bank charges are debited to the account. If the account is overdrawn interest is invariably imposed and that is also normally done by debiting the account with the relevant amount.

For the plaintiff reference was made *inter alia* to Paget's Law of Banking, 8th Ed., from page 498 to 506 and to a number of authorities including *Roxburgh v. Cox*, [1881] 17 Ch. 520 *Misa v. Currie*, [1876] 1 App Cas 544 *In re Keever* [1967]1 Ch 182 and *Prideaux v. Criddle* [1869] LR 4 QB 455 in support of the contention that the defendants were not entitled to debit the plaintiffs' account as they had done. I could find no help in those cases as they all appear to deal with banker's lien in respect of securities of one form or the other belonging to the bank's customer in the hands of the Bank. In the instant case the bank did not purport to exercise any lien on securities. In *Prideaux v Criddle* which was a case stated for the opinion of the Queens Bench, in stating the case with the consent of the parties an illustration of the ordinary usage of bankers in crediting and/or debiting their customers' account is given in item 14 of the case stated at page 458 of the report *viz*:

> .... It is the ordinary usage of bankers, when a cheque is paid in by a customer, to enter the amount to his credit, and if such a cheque is not paid, immediately upon its dishonour to return it to their customer, and upon so doing to debit his account with it.

In the instant case the defendants had testified that in the ordinary cause of their business as bankers they had, in advancing 100% of the amount in the bills of exchange, credited the customer's account and when on due dates payment on the bills was not made debited the account. There is nothing in the evidence before the Court to suggest anything improper or even unusual about this usage of the defendants and as has been seen, the evidence shows that the plaintiff had accepted the debiting without protest.

In my judgment the evidence, oral and documentary is overwhelmingly against the contentions made by the plaintiff, and against the submission made on his behalf. The plaintiff's claim has to be dismissed with costs.

This action had been consolidated with Kuala Lumpur High Court Civil Suit C1279 of 1985. At the commencement of the trial in Civil Suit C1073 of 1980 it had been agreed by the parties that judgment in C1279 of 1985 will be consequential to and follow the Court's decision in C1073 of 1980. There was also a related foreclosure action against the land charged by Chan Sim Yong, being O.S. F1386 of 1984, which had been stayed pending the disposal of the instant action. It follows that the plaintiffs in C1279 of 1985 are entitled to judgment for the amount claimed in para 8 of the statement of claim in that action such judgment not to preclude the bank pursuing with the foreclosure action, any amount recovered thereby to be account to of the judgment and costs in C1279 of 1985 and C1073 of 1980.

The Plaintiff's claim in C1073 of 80 is dismissed with costs. In respect of C1279 of 1985 there will be judgment for the plaintiffs therein for RM1,593,715.90 together with interest thereon from 1st March 1985 at 18% p.a. on monthly rests until realisation. The plaintiff bank may at liberty proceed with the aforesaid foreclosure action O.S.F1386 of 1984, any amounts recovered thereby to be to account of the judgment and costs in both C1073 of 1980 and C1279 of 1985.